

**Town of Milton
Board of Adjustments Meeting
Milton Library, 121 Union Street
Tuesday, July 23, 2013
7:00 p.m.**

**Transcriptionist: Helene Rodgville
[Minutes are Not Verbatim]**

To the members of the Board of Adjustment: Please note, that as you do not meet on a regular basis, most of your voices are unfamiliar to me. In an effort to create an accurate record of your meetings, please just state your name prior to speaking. This will allow everyone to benefit from the accuracy that will create. Thank you. Helene Rodgville

1. Call Meeting to Order – Jim Crellin

2. Roll Call of Members:

Bob Carbone	Present
Valerie Valeska	Present
Jim Crellin	Present
Matt Dotterer	Present
Janet Turner	Present

3. Additions/Corrections to the Agenda

Jim Crellin: Are there any corrections to the agenda?

4. Approval of the Agenda

Jim Crellin: I hear no corrections to the agenda.

5. Approval of the Minutes – January 22, 2013

Jim Crellin: Have we got them? Where? Are there any corrections to the minutes of the January 22nd meeting? Can we approve the minutes, as submitted. Do we have a motion to do that?

Matt Dotterer: I make a motion.

Bob Carbone: Second.

Jim Crellin: All in favor say aye. Opposed. The agenda is approved as submitted.

6. Business – Discussion and possible vote on:

a. Review of policies, procedures and potential updates

Jim Crellin: Just a review of the Policies and Procedures and I'm not sure what potential updates, means. I guess... I generally ask for the meeting as a result of the meeting we had in June at the Parody Center when Max Walton talked about Boards of Adjustments and some of the requirements and responsibilities of the Board. We have someone here who can answer all those questions.

Seth Thompson: Of course. All of the questions.

Jim Crellin: All of the questions. These are procedural questions that he mentioned, that Max mentioned and, to my knowledge, we don't do. Allows the Board Chair to administer oaths and compel testimony. I don't know whether we... How important is that?

Seth Thompson: Well, I suppose, just kind of taking a global perspective, Title XXII in Chapter 3, gives you certain abilities. It authorizes you to do certain things. I sent over just a sample set of hearing rules. You don't necessarily have to swear people in and in fact, I think my rules allow for the fact that if you choose to not swear the first person in, then everybody's going to abide by that same rule and nobody will be sworn in. So really the rules... I think it's helpful to look at them as the procedure for going through an individual application, who would present what statement first and then who goes second and how any sort of speaking would be handled; any sort of objection. I think it's helpful so that... It's helpful to the applicant's, as well as to the members of the public to know when they're going to be given an opportunity to put in their 2¢.

Jim Crellin: To say something. Okay.

Seth Thompson: So that's why it's helpful to adopt a set of Hearing Rules. These aren't, by any means, set in stone. You have some discretion in terms of how you want to run your hearings, but I'm more than willing to answer any questions.

Jim Crellin: Another question I had. It says Requires that records be immediately filed in the office of the Board. Now, we do take minutes and they are immediately filed. I guess Robin is the custodian of all the minutes and the documentation of anything that comes before the Board. But it was suggested that in the Office of the Board, it was suggested that even if there wasn't an office, per se, that at least a file drawer be designated as the Office of the Board of Adjustment. I don't know how important that is. Should there be an appeal or what?

Seth Thompson: And you just hit on the reason for the filing. And that's basically to start the statute of limitations and that really benefits, not just the Town, but also the applicant's. For instance, if the application is granted, they would like that statute of limitations to run so that they feel comfortable then relying on the decision that's been made; similarly, if the application is denied, based on some objection, the objector's would also like that feeling of certainty that comes from a statute of limitations. And that statute starts to run when it's been filed.

Matt Dotterer: Which is 30 days, correct?

Seth Thompson: I believe it's 30 days. Yes. That's in the Delaware Code. I think my rules give you 60 days to make a decision; but once the decision is made, it should be filed. Again, filing the decision, I always tell people that it's best if it's stamped as Received, as well...

Jim Crellin: So that you'll get the official date?

Seth Thompson: Exactly. But designating a drawer certainly makes sense. I don't know if Robin knows if the Town Hall has a "received" stamp or something that indicates...

Robin Davis: We do. I can get one made up. We do have some that when things come into Town Hall, we stamp it; like when an application comes in, a lot of times it gets stamped, or payments or something like that. We can use that type of stamp. Mr. Crellin, normally what happens to it now, it gets put into the property file, with all the rest of the documents, in a folder.

Seth Thompson: The problem then is, it's just not clear when it was actually received in

the file, that's the concern?

Robin Davis: But technically it's not in the office of the Board of Adjustment.

Jim Crellin: Just in a file cabinet.

Robin Davis: Correct.

Jim Crellin: I'm assuming that the received stamp has a date on it.

Robin Davis: Yes. Correct.

Jim Crellin: Okay, so we've established the date it was received. Now it was suggested that it needs to go into a file that at least portends to be the Office of the Board of Adjustment and labeled as such?

Robin Davis: Yes and that's the thing. Does it have to be labeled? Does a file drawer... All of our property files are kept in say six filing cabinets. If we designate a drawer, an empty drawer in that filing cabinet, that says Office of Board of Adjustment, is that...

Seth Thompson: I think that would probably fit with Best Practices. So, my suggestion... I'm looking at my Draft Rule 6.11, perhaps in addition to a copy of the Decision being placed in the actual property file; another copy that's stamped as "received" would then go into the designated Office of the Board of Adjustment. I think that's clear. Then, if somebody's used to just going and looking in the property file, not realizing there might be a variance, at least that way they're covered, but you're also complying with the Rule and if somebody were to strictly construe that and say you have to have an Office of the Board, then we would know where that office was and that would have the file, as well.

Robin Davis: Yes, I think that was the intention of trying to keep everything with all the property records; it's keeping everything together; because if these files just get stuck in a file, in a separate filing cabinet, somebody just looking at the property file would not know there's a variance that had been approved for that.

Jim Crellin: Unless there was at least a slip of paper put in that file saying there was...

Seth Thompson: It's especially important when it comes to variances, because that's not normally something that's recorded in the Recorder of Deeds; when it comes to site plans or sub-division plans, those all can get recorded. I supposed site plans don't necessarily; but sub-division plans generally do, but variances tend not to.

Robin Davis: Would the stamp, ideally, instead of having a "received" stamp, would it be better to have an Approved or Denied stamp then with the date; so the date that it was either Approved or Denied?

Seth Thompson: Well the interesting thing is, it's not necessarily when the Decision is made. It's again when the Decision is filed. So that's why I would suggest having the stamp read as it was "received", as opposed to when it was sent.

Robin Davis: So basically it was "received" in the Office of the Board of Adjustment. I understand. I got it. Okay.

Jim Crellin: Okay, so you'll take care of that Robin? Good.

Robin Davis: Yes.

Jim Crellin: And Robin is the designated keeper of the Exhibits, etc., etc.?

Robin Davis: Yes. Again, what I have here, every application has... I've color coded the applicants; the blue is Board of Adjustment; Historic Preservation they end up with an address and a parcel number and all the pertinent information to that application is stuck in here, along with the agenda's and the minutes from the meetings. That's what in turn at the next meeting when the minutes get approved and it gets all filed complete; and stuck in the property file. So what I will do is just take another copy of this and stick it

in...

Jim Crellin: And the statute of limitations is after the received date, is how long?

Seth Thompson: Thirty days.

Matt Dotterer: Thirty days.

Seth Thompson: And it goes to the Superior Court.

Jim Crellin: Goes to what?

Seth Thompson: Superior Court.

Jim Crellin: Right.

Robin Davis: Now, the minutes, of course won't be put in there at the time that the "received"...

Jim Crellin: Right. It's just the documentation I think that they're referring to.

Robin Davis: Okay, that's fine.

Seth Thompson: The typical process for an appeal; somebody would file a Writ, with Superior Court, asking for the appeal. At that point, Superior Court issues a Writ and says, please create a record. So, normally the Appellant is the one that has to pay for the transcription if the meeting was recorded and the Town has to produce the minutes; but that's the process. The Town isn't necessarily obligated to transcribe, unless somebody appeals. You are obligated to at least keep minutes, under Freedom of Information Act. But I understand you guys tend to record and transcribe everything anyway.

Robin Davis: Yes. And I think too, if I can jump ahead, they discussed about keeping a disc with the file?

Seth Thompson: In terms of the recording disc?

Robin Davis: Yes.

Seth Thompson: And I think that's fine. Again, that's just another means of insuring that the record is accurate.

Jim Crellin: I saw in here that the Exhibits... Do the Exhibits to any application need to be either numbered or lettered or something? I don't know that we do that.

Seth Thompson: I had put that in the Rules. Again, that's fairly typical of even Administrative proceedings; just so it's easy to see what people were referring to in the Record. I take it you always keep copies... Do you keep copies?

Jim Crellin: I keep copies, but they haven't been designated 1, 2, a, b, or whatever. Is that important?

Seth Thompson: I think it gets important if it's going to be a number of exhibits.

Jim Crellin: One or two is...

Seth Thompson: Most of your applications are variances, if not all of them, as opposed to something related to a use. I think when it comes to a use, that's when you tend to have a lot more exhibits.

Jim Crellin: And maybe a lot more conflict.

Seth Thompson: Right. Right. When it comes to variances, it tends to be some sort of survey or something to that effect, but you probably don't have exhibits into the triple digits. When it comes to uses, there tends to be just a lot more discussion than documentation; in terms of how something will be used. So that's not as imperative in my mind, just given the way your Board functions.

Jim Crellin: It's indicated in here that the reasons given by the members of the Board of Adjustment for either Approving or Disapproving an application, the reason should be stated in terms of the statute that we're talking about.

Seth Thompson: That's correct.

Jim Crellin: I don't know whether we do it in the exact terminology, but we probably paraphrase the statutes.

Seth Thompson: And paraphrasing is fine. I think, also, each person doesn't need to state every single reason; they can adopt another person's reasoning. The main thing is the record needs to be clear as to why something was approved.

Jim Crellin: Why the decisions were made.

Seth Thompson: That's exactly right. A lot of my municipalities, if it's going to be something where it's fairly convoluted or maybe the reasons aren't going to be abundantly clear, will at their next meeting approve a written decision that the attorney would have drafted up, so that their reasons are clear in the written Decision, instead of just relying on the minutes for instance. They don't do that all the time, just based on cost; but it is important that again, if a Judge is looking over the record, he sees why somebody approved what they approved. And it's helpful to look back at your legal standard and it's not necessarily a checklist; but using that standard, it's important to understand why you're saying, oh this creates an unnecessary hardship because...

Jim Crellin: Does anybody else have anymore questions about...

Seth Thompson: Actually, going back to that final point, occasionally and I don't want to put too much of a burden on people that are applying and might be representing themselves and it might be some very small variance that they're seeking; but often, if somebody's represented by an attorney, the attorney will create a proposed findings; they could be submitted to the Board ahead of time and that's helpful, in that that's at least the Applicant's version of why they think they should be granted a variance, as it applies to your legal standard. I don't know if you want to require that of everybody. I think that can be difficult, because you're going to be dealing occasionally with 2" variances on a setback that nobody's going to see.

Jim Crellin: I don't think we need to do that. If someone feels the need to be represented by an attorney, sobeit, but...

Matt Dotterer: Would it make it a little bit easier, if we provided, kind of like a County; I've applied to the County for several different variances for client's of mine, where you have to prove a hardship and there are several different questions; in fact they have six or seven questions. Of course, one's repeated twice; but, basically it goes through that thing and actually in the hearings for the County, for the Board of Adjustment, you actually present to them; and I don't know if any of you have been to the County for a Board of Adjustment meeting? I've been to a lot of them. Some of it's just to observe how they run the operation and when the party actually presents their situation; of course, they have to go through those questions and answer each one of those questions, in public, on record, and explain how their hardship is. Was it created by the owner? Was it created by the lot, because of a non-performing lot? You go through all those different questions. Would it help out if we actually had something like the County has, when somebody applies for a variance, for example; then we could have that list of questions that they can help out? Sometimes I'll send that list of questions to them...

Jim Crellin: Prior to that meeting.

Matt Dotterer: And they'll look at it and go crap, I can't do any of that. I can't prove a hardship of this. I just want a bigger house or I want a screened porch that's into that setback 5'; I can't do that. And I'll say, well you can try for it. You're going to spend the

\$400 for a variance. You're going to wait a couple of months to get on the docket and you may or may not get it. Of course, most of the time they do get it, but would that help out if we did something like that, as far as sending out that five or six sets of questions, like the County does?

Seth Thompson: I think it does, because it helps the applicant's organize their thoughts and their presentation and it probably helps the Board organize their findings, as far as the reasoning. So I think that makes a lot of sense. Your language doesn't track exactly with the County; but you could seemingly do the same thing, where the application reflects an explanation as to why they fit the factors. That's something I can create or Robin... It doesn't matter to me.

Matt Dotterer: They do the same thing. They go right down the line and Mr. Callaway and all the way through all the members, do you accept or deny and then why and they just give a brief; they don't go through every single question, because of this, this and this. It's bing, bing, bing, right down the line and it helps out immensely. You're looking at those questions going well this is what we should be looking at and not, oh it looks pretty.

Jim Crellin: Yes, yes, or nobody's complained about it.

Matt Dotterer: Yes, exactly. It may not be right, and nobody's going to object to it, but...

Robin Davis: Is that something, Matt, that you can supply us? Or maybe I can call...

Jim Crellin: Well, if the County is a little bit different than ours, it might need some adjusting and tweaking.

Robin Davis: Well at least we would have something to maybe start off with.

Seth Thompson: Yes.

Matt Dotterer: I can get you a copy of what I have in the office. I believe it might be on their website too.

Robin Davis: That's what I was thinking about.

Matt Dotterer: I could talk to Albert Lank and see what he has too.

Seth Thompson: We have a lot in my office. It doesn't matter to me.

Robin Davis: I was going to say it would give some kind of ground to start off with anyway; or if we decided to take those questions and just run with them.

Seth Thompson: Does the Town currently have a formal application, or is it just...

Robin Davis: Yes, we just have an application and I don't have one with me. It basically has the property, the applicant.

Seth Thompson: What they're requesting?

Robin Davis: Yes, the Code that they're asking a variance of and kind of like a description, a little more in-depth description and some things you have to supply; like a site plan or drawings or something like that. Yes, that's about it.

Matt Dotterer: It's like a short form.

Seth Thompson: So potentially it could just have tacked on for an area variance; basically a few questions that they need to answer.

Robin Davis: And they could attach that right to this. So this is it, when you turn that in, have that filled out.

Matt Dotterer: Yes, answer these questions and...

Jim Crellin: Anyone else?

Janet Turner: I don't know if you provided this. My thought was that when we all came away from the training seminar, there were questions raised; that we were often very lax

about; not just this current configuration of the Board of Adjustment, but prior ones. I thought that was one of the most important things pointed out to us; that we were not always taking the long-term consequences of some of the decisions and I've made notes in my record as we went through that seminar and now others did too. I thought that that was really an important thing for us to be looking at. What we gathered from that, what improvements we could make, what errors or blunders we don't want to fall into, inadvertently, by being lax.

Matt Dotterer: Setting a precedent. You start something, the ball will keep rolling.

Janet Turner: Absolutely, it sets a precedent to do that. I didn't know whether we were just going to go through all these proposed ideas from our Council, or we were going to look at some of our notes and...

Jim Crellin: I was just going off the notes that I took at the meeting. I was just referring to the questions I had as a result of that seminar.

Janet Turner: That's just what I was talking about too. That's one of the things that I think a lot of us highlighted the same issues.

Seth Thompson: I'm sorry I wasn't there, but I'm certainly... I know Max well and I've been through seminars with Max and I understand the issues that he probably raised, because it is important. These might be administrative matters, but they are subject to judicial review, so the record has to be clear.

Janet Turner: Right. Let me give you an example, at least one thing that caught my attention in the notes from the seminar that Max gave. This had to do with the decisions of this Board are attached to the property and not the owner. So the long-term consequences are really significant. You're not just doing something that seems easy to do, it's nobody else's problem, let's just do it, because that's going to convey with the property; even if the owner's change. I think that's something that we have to be more careful about and first of all, even in working with the proposer that's coming before us, and even perhaps alerting them to that fact.

Seth Thompson: I think that is an important point that the variance doesn't go away, just because the property changes hands, especially since normally they're building in reliance on that variance; or they're taking some sort of detrimental reliance based on that approval. You can envision a scenario where somebody builds on a triangular lot and therefore has to build into the setback and if, for some reason, that approval would expire, or would negate when they went to sell the property, they would probably have a very difficult time selling the property; so I think that's an important point; that it stays with the property.

Jim Crellin: Robin, is it your proposal that this be looked at and approved by us tonight?

Robin Davis: No, that was just something that the Town Solicitor had provided as a draft. We could look at it and take parts of that, yes.

Seth Thompson: You don't have to approve it tonight. I would suggest that the next time you have an application in front of you; before you handle that application, you might want to approve the Hearing Rules. I figured tonight we might make any adjustments that you would need, so I wanted to get your input on it before. I didn't expect it to be approved tonight, but you would benefit from having it approved before your next substantive application.

Valerie Valeska: On that note, on these Hearing Rules, the rules themselves I have no problem with, until you get to the back page and it says that in part, any rule herein

contradicts any State statute or any Ordinance of the Town of Millville; then we have Board of Adjustment of the Town of Milton. This creates an ambiguity that I believe needs to be corrected.

Seth Thompson: And I suspect we can't really do much about the Town of Millville here; that's one of my other municipalities; there are too many Mil's in Sussex County. I will certainly correct that and I apologize.

Janet Turner: As substantial as in equal or almost or approximate. You promote substantial justice, as in equal, approximate, more than 50%; talk about an ambiguous legal phrase or term.

Seth Thompson: We can remove the term "substantial". We need to be doing what's in the interest of justice. I suppose you're right. We fall into our legal jargon very easily and use our little terms of art that I think we don't think about too well.

Janet Turner: Does it open up ambiguous ambiguity?

Seth Thompson: So in Paragraph 8, I will pull out the word "substantial" and leave "justice". Did the Board want me to specifically include in Rule 6.11 that there will be a copy kept in the property file, as well as a copy of the Decision filed in the Board of Adjustment "Office"?

Jim Crellin: If that's what we're going to do, it probably should be stated, as such.

Seth Thompson: Alright, I will do that. Going back to the exhibits Rule 6.7, we could put some qualifying language in the beginning saying in the Board's discretion, or in the event that there will be multiple exhibits or if you want to do it that way all the time.

Jim Crellin: I have no problem doing it, even if there is only one; just put Exhibit 1.

Seth Thompson: Okay and that's fine. Removing the discretion makes it clear that everybody needs to play by that Rule.

Valerie Valeska: If I may, on that note on Page 5 in our outline from the seminar, the language there says someone should be designated to keep all the exhibits submitted, each should be numbered. It doesn't say must. But, for the sake of records, and even if it's just one exhibit, that exhibit, if it's going to be in that file, should be identified, so that for whatever it gets separated, it can be returned back to its proper file without wondering where it goes.

Jim Crellin: Well I think it should be stated in the discussion of the application how many exhibits there are, so that it gets in the record; so just as you indicated, you go to the file and there's only three exhibits and the minutes say four; where's the fourth?

Seth Thompson: Typically the procedure for that, that I often follow, I tell people, unless they're going to be very organized to the point where they know their remarks backward and forward; they don't necessarily need to mark them ahead of time, but it would be good to mark them numerically, as they turn them into the Board. Some people are and you see it more with controversial use, use exceptions, or use variances; but you might see a packet that's provided to each of the Council Members. Again, when you're talking about area variances, we probably don't need to require that of people, but I think it is helpful if they hand it up and it gets marked in terms of whether it's the applicant or whether it's the objector; the number and then the date.

Robin Davis: Normally, there's usually nothing submitted at the meeting. Normally, we try to get it in the packet before, so the members have all the information prior to.

Seth Thompson: So do you then for the record go through and say what's been received so far?

Robin Davis: No.

Seth Thompson: Okay, because that would be good to clarify what you have been... I would do that; basically you're asking them to put all their exhibits in with their application. When they present their application, I would go through at that point in time and mark the exhibit and really you're probably asking them to verify where they got the exhibit. We would call it "authentication" basically, but is this your site plan or is this your survey; yes; okay; and it's dated by McMann Surveyors on April 4, 2013...

Robin Davis: But that would be something that they should identify as the exhibit; say if they have five different pictures. Do they have those marked already?

Seth Thompson: I think you could go through and do it at the time. Actually, it's probably best to do it on the record and again you're marking it with a number and the date, each exhibit, so that the record's clear, both when you're reading through a transcript and you can see what exhibit they're referring to and then when you pull the file, you can see, all the exhibits are here.

Janet Turner: Wouldn't it be enhancing to just say when they do their proposal, if you're submitting any photographs or other kinds of records, please enter them with a number; and then still when you go forward with it, with Robin or whoever else, good that you're confirming that this was properly completed.

Robin Davis: That's what I want, because I'm the front line on this, so I want to tell people the right thing. I don't want them to come to this meeting and the Board members say well how come your stuff's not labeled and then, well Robin never told me to label it; he was going to do it at the meeting and then we're all sitting here looking confused.

Janet Turner: Well this is going forward. Going forward I don't think...

Robin Davis: I just wanted to know how...

Janet Turner: It's a little less burdensome for you, if they come in and identify them...

Robin Davis: Well, they're organized now, but it's going to be more burdensome on me to make sure that all the exhibits are labeled and all the eleven copies and all that stuff, when I look at it.

Janet Turner: What I don't understand, Robin; you said you have them come in and you go through it with them and then number the exhibits, if that's what I understood you to say.

Robin Davis: No, I don't number them. I would have them do that.

Janet Turner: Okay, but you're going through it page by page.

Robin Davis: But, once they delivered all the packets, I have to go through every one of those packets and check them out.

Janet Turner: I mean, you're not going to hold them to a court case, if they don't do it, but it certainly makes your job easier and it helps them organize themselves to label the application.

Robin Davis: I understand, but I want to make sure everybody... I don't want any reason that one applicant comes in and says well I didn't have to label mine; how come I have to label mine? I just want to make sure all...

Janet Turner: I hear what you said, sure.

Seth Thompson: We could adjust Rule 6.7, to say all exhibits provided, with the application and presented to the Board of Adjustment for it's consideration, shall be identified. Do you want it to read that way? So they've numbered the ones that they're providing with their application. If they bring additional ones to the Hearing, then you'll

just pick up. If they had provided five...

Janet Turner: Is that covered in the application right now? That issue?

Robin Davis: No. It's not addressed on the application that is given to the applicant.

Janet Turner: Having been on the Board of a condominium association and it was the architectural board, so we would make changes; well somebody, before we made these changes, said well I didn't have to do it; that's the nature of progress of whatever you want to call it; things do change.

Robin Davis: Yes, I understand that part, but I just want to make sure that from this day forward or whatever going forward; that if we have two applications, I don't feel I should be the one making decisions that you have to label yours and you don't have to label yours. It should be all standard set aside.

Seth Thompson: Across the board.

Janet Turner: Well, I'll make a suggestion, that on the application form, add a line that says, if you're submitting photographs or other kinds of graphic material, please number them and identify them. Whether they do it or not, but at least it helps you. Starting...

Robin Davis: If we're saying that's what is going to be required, then the application would not be complete and then we couldn't accept it.

Janet Turner: Well you could fix a date certain, when you say beginning in September...

Jim Crellin: Any applications received on or after August 1st, or September 1st or something.

Robin Davis: Yes, I understand that. I'm just saying that if somebody comes in two months from now and we have these Rules in effect, and they drop off their ten sets, and they're not labeled, I am not going to accept that because it's not labeled, like the Board wants.

Jim Crellin: Aren't there instructions that go out to the applicant as to what...

Robin Davis: No. We're kind of pretty broad on that.

Jim Crellin: You submit what you want?

Robin Davis: It's just a site plan or...

Janet Turner: Let's not make this so hard and fast; obviously if somebody comes in and they didn't do it, it's nice or it's appropriate for you to say, I'll make sure you get them numbered, I'll go over it with you. Nobody is saying you can't do that; it just is making the whole process easier, if they understand they should have that...

Robin Davis: I just don't and I'm not trying to be difficult, but I don't personally think it's my job to fill out the applications and fill out paperwork for people.

Janet Turner: I agree.

Jim Crellin: It says here in 6.7 that a member of the Board of Adjustment shall date and initial each document or exhibit entered into record to authenticate same.

Janet Turner: It's simple.

Seth Thompson: And I think that's designed to occur at the hearing; so you could have them free... I would use the term "free mark", but that's just from our Hearing lingo; but then a member of the Board authenticate...

Jim Crellin: A designee.

Seth Thompson: That's right, so that somebody can tell...

Bob Carbone: This is Exhibit 1; this is Exhibit 2...

Seth Thompson: So that when you pull the file, you can tell that nobody has fiddled or switched exhibits.

Janet Turner: The other thing is, you have a procedure. People call the Town Hall, they speak to Robin, I assume and they say I need to ask for a variance. You provide them with the application form. All I'm saying is, put this information...

Jim Crellin: on the application form.

Janet Turner: I'm not saying it's a do or die thing; but would they please submit numbered and identified exhibits, with your application.

Bob Carbone: Can we change the application so it has something on there saying that you must label your exhibits A through Z, before you submit your application. That way you don't have to take the liability of you didn't label these exhibits right and then if you have something that comes in during the meeting, look at their exhibits, say they have exhibits A through H; well the next one is going to be I; we'll make sure it's recorded on your application, saying that we have a new exhibit. It's going to be exhibit I. All the Board members have copies of that and then have it into record.

Robin Davis: That's roughly what Historic Preservation does. They have, along with the application, there's like five or six things that they say pictures of the surrounding homes; you've got to have those. You've got to have sample materials. You've got to have those four or five things that have to come along with that application; which is fine and I could put that on our application and say Exhibits and then put that they must be numbered.

Bob Carbone: On 6.7, if we take just the reading of the paragraph as it says, all exhibits presented to the Board of Adjustment for it's consideration shall be identified and marked appropriately, examples are given. That also sets the basis, that if those exhibits are not presented for filing to us, without identification, they're not acceptable. Because the only thing that a member of the Board of Adjustment shall date and initial; so that relieves you automatically of your burden Robin. All you do is look at it and say, oh yes, this is identified, this is Applicant's Exhibit A, B, C, etc. or the Appellant's Exhibit 1, 2, 3, 4; however it's decided to identify them. The burden of proof is on the people coming before the Board, with this wording.

Robin Davis: Yes and that's correct. It's the same thing with Historic Preservation. If there's five things you need to have your application complete; if you only have four of those things, then I don't accept your application and it's not, I'll bring it later; I know today is the cut-off and I'll have it to you tomorrow. No, it has to be... I just want to be clear cut, straight across the board with everybody; not just if it's a controversial item that's going to have 50 exhibits; or just somebody that's going to have one exhibit. I just want to make sure that if it's applied evenly across everybody.

Janet Turner: It should apply to everybody and if they have 50 exhibits, then it's much easier for something to get lost.

Robin Davis: Correct and I just want to make sure that I hear a lot of times that sometimes the Town's too tough on this and tough on that. Next thing you know, if somebody drops off something, after their first initial meeting; that they don't have their stuff right and they don't make this month's meeting; now they're mad because they can't get their job done. Well, just because I didn't have a 1, 2, 3 on my pictures, you're going to turn my application down.

Bob Carbone: That's the objection, but if we have the rule in place...

Jim Crellin: Just a simple statement on the application, that all exhibits must be designated Exhibit 1 through infinity.

Robin Davis: Yes, that's correct. That's fine. I have no problem with that. I just want to make sure we're good.

Janet Turner: I think it works in your benefit as much as anything, because then you have a fall back. This is what the rules state; and the applications should be rewritten to include that information.

Robin Davis: Correct.

Seth Thompson: So it sounds like I'll change Rule 6.7 to say all exhibits submitted with the application and presented to the Board of Adjustment for consideration, shall be identified.

Bob Carbone: Yes. Yes.

Seth Thompson: Okay great.

Jim Crellin: Then he can put that same statement on the application.

Seth Thompson: Yes. I do like the notion of providing a copy of the rules; or at least maybe posting them on the website, so that people know what to expect; or objector's. Again I just think it's helpful, so that people know...

Bob Carbone: If they don't know the rules, they can't play the game.

Valerie Valeska: They're certainly at a disadvantage.

Jim Crellin: Right.

Matt Dotterer: Now will that affect the Hearing Rules? I know that, again, I hate to go back to the County, but that's the only thing I know for the experience and being on the board here. I know there's a lot of stuff that's spoken in the beginning, before anybody's allowed to say anything; like for example, cell phones are turned off; I don't want to say speak when being spoken to. It sounds like my mother-in-law. But basically there are certain rules that you have to present to the public, that are sitting there, so that you can maintain order.

Seth Thompson: I always think that's helpful to lay out the ground rules. I think that falls within the discretion of the chairperson running the meeting. But you're right, there's kind of a canned speech that everybody hears; please turn off your cell phones, please only speak one at a time and that's especially important when it comes to these types of hearings, because of the transcriptionist. Two people talking at once, they can only type one voice.

Robin Davis: Some of these hearing rules, as far as quorums and meetings and things like that, are in the actual ordinance that is there; do they have to be here too or...

Seth Thompson: They don't have to be here, as well; but I thought it was helpful to put them in the same place. Now obviously, the risk is that if for some reason there was an amendment to the Code, we then would have to adopt a different set of hearing rules. My thinking process was so that people would realize... basically they could reference one set of rules, as opposed to having to look at the Code. Now they are going to have to look at the Code when it comes to the Standard, unless they are looking at the questionnaire that gets created and attached to the application. But my thinking was just to have a quick reference basically.

Robin Davis: And would this have to go... Can the Board just approve this?

Seth Thompson: Yes.

Robin Davis: It doesn't have to go to Council and added into anything else?

Seth Thompson: No. Title XXII allows the Board to adopt it's own rules.

Robin Davis: Okay.

Seth Thompson: The one thing I'll have to go through and double-check; again, normally and you probably heard it through Max's presentation... normally there are three categories where the Board of Adjustment has jurisdiction. The area variance, the special use variance, or special use exception, and then an appeal from a Town official. I'll have to go through and see if you have the latter two.

Robin Davis: The special use... now I don't know if you would say the special permitted uses, they're under Planning and Zoning.

Seth Thompson: Right and so are Conditional Uses.

Robin Davis: Correct.

Seth Thompson: So it could be that I'll have to just remove references to special use or special exceptions; just because your Code has elected not to provide you guys with jurisdiction over that. In terms of a decision of the Code Enforcement Officer, do you know offhand? I can look through the Code, but I don't want to make references to create confusion, if indeed we don't have jurisdiction.

Robin Davis: I think if it's something... I think with the Code Enforcement Officer, I think it says Board of Adjustment on it.

Seth Thompson: Does it?

Robin Davis: I think.

Seth Thompson: That is the common route. I'll go through and double-check. Occasionally Towns, very small Towns, just have it go to the Town Manager, for instance; but that's pretty rare. I would think Milton would do the norm, but I'll double-check that.

Robin Davis: Mr. Chairman, is this something maybe we want to get a little more and have Seth work on the changes and come back?

Jim Crellin: Yes, let him work on the changes and come back.

Robin Davis: Come back next month?

Jim Crellin: Yes. I would.

Robin Davis: And put it on the agenda item, as an update, or whatever?

Jim Crellin: Yes.

Robin Davis: Okay.

Seth Thompson: And I'll send it out... what I'll do is send it in track changes, so that hopefully it's clear where I've made additions and deletions.

Jim Crellin: What the changes are. Okay. Anything else?

Matt Dotterer: I have nothing else.

Bob Carbone: Matt has nothing else.

7. Adjournment

Jim Crellin: Can we have a motion for adjournment?

Bob Carbone: So motioned.

Valerie Valeska: Second.

Jim Crellin: All in favor say aye. Opposed. We're adjourned at 7:46 p.m.